

NOT INCLUDED IN
BOUND VOLUMES

LSP
Windsor, CT

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

FEDEX HOME DELIVERY, AN OPERATING DIVISION OF
FEDEX GROUND PACKAGE SYSTEMS, INC.

Employer

and

Case 34-RC-2205

INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, LOCAL 671

Petitioner

ORDER

On September 29, 2008, a two-member Board issued a Decision and Order remanding this matter to the judge¹ with instructions to reopen the record for the presentation of additional evidence. On May 22, 2009, the judge issued his Supplemental Decision on Objections. On May 27, 2010, a three-member Board issued an unpublished Decision and Certification of Representative sustaining in part, and overruling in part, the judge's findings and recommendations.

On June 17, 2010, the United States Supreme Court issued its decision in *New Process Steel, L.P. v. NLRB*, 130 S. Ct. 2635, holding that under Section 3(b) of the Act, in order to exercise the delegated authority of the Board, a

¹ The judge was sitting as a hearing officer in this representation proceeding.

delegee group of at least three members must be maintained. Thereafter, the Employer filed an Amended Motion for Reconsideration² contesting the validity of the Board's May 27, 2010 Decision and Certification of Representative because of its reliance on the judge's supplemental decision that followed a remand by a two-member Board.

Having carefully considered the matter, we reaffirm the earlier decision to remand the case. In addition, we have considered the judge's supplemental decision and the record in light of the exceptions and briefs, and we reaffirm our May 27, 2010 Decision and Certification of Representative for the reasons stated in that decision. Further, having duly considered the arguments in the Employer's Amended

² On March 17, 2010, the Employer filed a Motion to Dismiss Petition. On June 10, 2010, the Employer filed a timely Motion for Reconsideration requesting that the Board grant its Motion to Dismiss. In these motions, the Employer argues that the Regional Director's finding that the bargaining unit drivers are statutory employees is contrary to the D.C. Circuit's decision in *FedEx Home Delivery v. NLRB*, 563 F.3d 492 (2009). The Employer incorporates this argument by reference in its Amended Motion for Reconsideration. To the extent that the Employer seeks reconsideration of the Regional Director's April 11, 2007 Decision and Direction of Election, that portion of the Amended Motion for Reconsideration is untimely. We thus adhere to the Regional Director's decision on the above issue, particularly in light of the fact that the matter was not litigated in this specific election objections proceeding, and find the Employer's argument to lack merit.

Motion for Reconsideration, we deny the motion as lacking merit.

Dated, Washington, D.C., August 27, 2010.

WILMA B. LIEBMAN, CHAIRMAN

PETER C. SCHAUMLER, MEMBER

MARK GASTON PEARCE, MEMBER

(SEAL)

NATIONAL LABOR RELATIONS BOARD